



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA-HQ-OAR-2025-0201; FRL-11817.1-01-OAR]

RIN 2060-AW81

Ozone Reclassification State Implementation Plan Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is reconsidering certain aspects of the January 2025 final rule entitled State Implementation Plan Submittal Deadlines and Implementation Requirements for Reclassified Nonattainment Areas Under the Ozone National Ambient Air Quality Standards (“January 2025 final rule”). Among other things, the January 2025 final rule codified a policy that certain State Implementation Plan (SIP) requirements for a prior classification remain due upon an area’s reclassification to a higher classification. In this proposed action, the EPA is proposing a new interpretation that, upon reclassification, an area is subject only to those requirements in Clean Air Act (CAA) section 182 that are specific to that area’s current classification. If finalized, this proposed rule would apply nationwide to all past and future reclassifications associated with the 2008, 2015, and any future ozone National Ambient Air Quality Standards (NAAQS). The EPA is not reconsidering or reopening any other aspect of the January 2025 final rule in this rulemaking and is not addressing the scope of applicable requirements for NAAQS other than the ozone NAAQS.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Public hearing: If anyone contacts us requesting a public hearing on or before June 17, 2026, the EPA will hold a virtual public hearing on **[INSERT DATE 15**

DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL

REGISTER]. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2025-0201, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov> (our preferred method).
Follow the online instructions for submitting comments. You can also find a plain language summary of the rule on the Federal eRulemaking Portal.
- E-mail: a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2025-0201 in the subject line of the message.
- Fax: (202) 566-9744.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. For information on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For information about this proposed rule, contact Stephen Senter, U.S. EPA, Office of State Air Partnerships, Air Quality Planning Division, C531-H Research Triangle Park, NC 27709; telephone number: (919) 541-3042; email address: *senter.stephen@epa.gov*.

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. To request a virtual public hearing, contact the public hearing team at (919) 541-9782 or by email at *OSAPpublichearing@epa.gov*. If requested, the hearing will be held via virtual platform on **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The hearing will convene at 10 a.m. Eastern Time (ET) and will conclude at 4 p.m. ET; additional hearing hours may be added at the discretion of the EPA. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at *<https://www.epa.gov/ground-level-ozone-pollution/ozone-implementation-regulatory-actions>*.

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing no later than one business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at *<https://www.epa.gov/ground-level-ozone-pollution/ozone-implementation-regulatory-actions>* or contact the public hearing team at (919) 541-9782 or by email at *OSAPpublichearing@epa.gov*. The last day to pre-register to speak at the hearing will be June 24, 2026. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: *<https://www.epa.gov/ground-level-ozone-pollution/ozone-implementation-regulatory-actions>*.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have approximately four minutes to provide oral testimony. The EPA recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

During the hearing, the EPA may ask clarifying questions but will not respond to comments made during oral testimonies. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/ground-level-ozone-pollution/ozone-implementation-regulatory-actions>. While the EPA expects the hearing to be conducted as set forth earlier, please monitor our website to determine if there are any updates. The EPA reserves the right to delay the date of the public hearing for any reason including scheduling conflicts. If this occurs, the comment period will be extended by the delayed number of days. The EPA does not intend to publish a document in the *Federal Register* announcing updates. All updates and announcements will be communicated on the webpage listed above.

If you require the services of a translator or special accommodations, please pre-register for the hearing with the public hearing team and describe your needs by June 19, 2026. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2025-0201. All documents in the docket are listed in <https://www.regulations.gov>. Although listed, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information the disclosure of

which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available as PDF versions that can only be accessed on the EPA computers in the docket office reading room. Certain databases and physical items cannot be downloaded from the docket but may be requested by contacting the docket office at (202) 566-1744. With the exception of such material, publicly available docket materials and a plain language summary of the proposed rulemaking are available electronically at <https://www.regulations.gov>.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2025-0201. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be CBI or other information the disclosure of which is restricted by statute. Do not submit electronically to <https://www.regulations.gov> any information that you consider to be CBI or other information the disclosure of which is restricted by statute. This type of information should be submitted as discussed below.

The EPA may publish any comment received to the Agency's public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The <https://www.regulations.gov> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information

unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the Agency may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and should be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

Submitting CBI. Do not submit information containing CBI to the EPA through <https://www.regulations.gov>. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is electronic transmission using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.*, Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the Office of State Air Partnerships (OSAP) CBI Office at the email address *osapcbi@epa.gov* and, as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *osapcbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: U.S. EPA, Attn: OSAP Document Control Officer, 4930 Old Page Rd. C404-02 Durham, NC 27703, Attention Docket ID No. EPA-HQ-OAR-2025-0201. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Preamble acronyms and abbreviations. Throughout this preamble the use of “we,” “us,” or “our” is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA	Clean Air Act
CBI	Confidential Business Information
CFR	Code of Federal Register
CTG	Control Technique Guideline
DAAD	Determination of Attainment by the Attainment Date
DV	Design Value
FIP	Federal Implementation Plan
FTP	File Transfer Protocol
I/M	Inspection and Maintenance
NAAQS	National Ambient Air Quality Standards
NNSR	Nonattainment New Source Review
NSR	New Source Review
NO _x	Nitrogen Oxides
NTTAA	National Technology Transfer Advancement Act

OSAP	Office of State Air Partnerships
PBI	Proprietary Business Information
PRA	Paperwork Reduction Act
RACM	Reasonably Available Control Measures
RACT	Reasonably Available Control Technology
RFA	Regulatory Flexibility Act
RFP	Reasonable Further Progress
ROP	Rate of Progress
SIP	State Implementation Plan
TAR	Tribal Authority Rule
TIP	Tribal Implementation Plan
TPY	Tons Per Year
UMRA	Unfunded Mandates Reform Act
VMT	Vehicle Miles Traveled
VOC	Volatile Organic Compounds

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I. Overview and Basis of Proposal

A. Overview of Proposal

In the January 2025 final rule, the EPA codified a policy—referred to herein as the “leftover SIP elements policy”—providing that, upon reclassification, certain elements of a SIP associated with an area’s prior classification are no longer applicable requirements, while other SIP elements remain applicable requirements.¹ This policy meant that States must continue to comply with certain statutory requirements that apply to an area’s prior classification even after the area has been reclassified to a new, higher, classification subject to a different, and generally more restrictive, set of requirements. The EPA based this policy primarily on its interpretation at the time of CAA section 182,² which prescribes escalating requirements for nonattainment areas designated Marginal, Moderate, Serious, Severe, and Extreme and includes additional provisions with respect to compliance milestones and reclassification.³

The EPA is reconsidering the leftover SIP elements policy to ensure consistency with the best reading of the statute, including the text and structure of CAA section 182 and the function of the statute’s provisions for ozone NAAQS implementation as a whole. In this proposed action, the EPA is proposing to revise the Agency’s regulations at 40 CFR 51.1403 to provide that, upon reclassification, the area’s new (current) classification level governs which SIP requirements are applicable to that area. The EPA is not reconsidering or proposing any changes to any other regulatory provision addressed in the January 2025 final rule at this time.

¹ 90 FR 5651, 5665 (January 17, 2025); *see* 40 CFR 51.1403.

² 42 U.S.C. 7511a.

³ In this preamble, the EPA is using the phrase “applicable requirement” to denote whether a State is legally required to submit certain SIP revisions, or not. If the requirement is applicable, the State does have a legal requirement to submit the SIP revision associated with that requirement. If the requirement is not applicable, the State is not legally required to submit that SIP revision. The phrase “applicable requirement” appears in certain CAA provisions that are not relevant to this proposal. The EPA is not interpreting the statutory phrase “applicable requirement” in this proposal.

As explained further in section II.C of this preamble, reclassified areas would be required to submit SIP elements specific to the applicable classification level, as though that area had originally been classified at that classification level—referred to herein as the “reclassified area SIPs policy.” If a required SIP element for an area’s new classification level was already satisfied for that NAAQS when the area was at a lower classification, the requirement would be considered fulfilled and would not be triggered anew upon reclassification. The EPA believes that this interpretation better reflects the text and structure of CAA section 182 and related provisions, under which each nonattainment area can only be subject to a single classification at a time. The area’s current classification level defines a State’s requirements for that area under CAA section 182, which provides for requirements applicable to that classification and specifies when the requirements for that classification level incorporate certain requirements for a prior classification.⁴ Just as an area can only be subject to a single classification at a given time, an area can similarly only be subject to the requirements associated with a single classification at a given time.

Upon the effective date of reclassification, the area would be subject to the requirements for that new classification only. For example, for an area that is reclassified from Moderate to Serious, the State is required to submit only Serious area requirements because the area is now Serious, and a single nonattainment area can be subject to only one nonattainment classification at any point in time for the same ozone NAAQS. However, per the instruction in CAA section 182(c), States with Serious nonattainment areas are required to make the SIP submissions described under CAA section 182(a) and

⁴ See, e.g., 42 U.S.C. 7511a(b) (providing that upon reclassification from Marginal to Moderate, States must “make the submissions described under subsection (a) of this section (relating to Marginal Areas) and shall also submit the revisions to the applicable implementation plan described under this subsection.”), 7511a(c) (similar for reclassification from Moderate to Serious), 7511a(d) (similar for reclassification from Serious to Severe); see also *id.* 7511a(i) (providing that when “an ozone nonattainment area” is “reclassified” for failure to attain by operation of law, the State “shall meet such requirements of subsections (b) through (d) of this section as may be applicable to the area *as reclassified*” (emphasis added)).

(b) in addition to the other submissions described under CAA section 182(c). The newly classified Serious area does not escape the Moderate area requirements. The State must submit the Serious area SIP elements, which necessarily include all of the Moderate area SIP elements, on the timeline that accords with the new Serious area classification. The statute is clear that higher classifications are allotted more time to attain the NAAQS⁵ and therefore are afforded more time to develop and implement some plans and controls to reduce emissions.

It is the EPA's intent that this rule, if finalized, would apply with respect to all past and future ozone nonattainment areas reclassified by operation of law from (1) Marginal to Moderate, (2) Moderate to Serious, and (3) Serious to Severe, and also to any voluntary reclassification request granted by the EPA traversing any of these classifications, including voluntary reclassifications to Extreme.⁶ Put another way, if finalized, this proposed rule would apply to the EPA's past reclassification actions such that it would relieve States subject to those actions from the SIP submission obligations associated with the lower classification (the classification that pre-dated the reclassification). If, for example, the EPA had issued a finding of failure to submit for the lower classification SIP submittals, the finalization of this action as proposed would render such a finding obsolete because those SIP submittals would no longer be due to the Agency. Moreover, because this interpretation is specific to the ozone provisions of CAA section 182, it would apply to nonattainment areas for any future ozone NAAQS and all current ozone NAAQS (i.e., the 2008 and 2015 standards) and not to nonattainment areas for any other NAAQS not addressed in CAA section 182. While the EPA is soliciting comments on all aspects of the proposed changes, the Agency is

⁵ 42 U.S.C. 7511(a)(1).

⁶ See e.g., 81 FR 26697 (May 4, 2016), 84 FR 44238 (August 23, 2019), 87 FR 60926 (October 7, 2022), 87 FR 60897 (October 7, 2022).

specifically seeking comments on the concept that this proposed rulemaking, if finalized, would apply to reclassification actions that occurred in the past.

Under CAA section 301(d) and the Tribal Authority Rule (TAR), Tribes may, but are not required to, submit implementation plans to the EPA for approval.⁷ Accordingly, for Tribal nonattainment areas, a Tribe is not required to submit any Tribal Implementation Plan (TIP) revisions applicable to nonattainment areas pursuant to CAA section 182. Tribes that are part of multi-jurisdictional nonattainment areas are also not required to submit TIP revisions.

B. What is the background for the proposed actions?

On March 27, 2008, the EPA issued a final rule to revise the NAAQS for ozone to establish a more stringent 8-hour standard (“2008 ozone NAAQS”).⁸ In that rule, the EPA promulgated identical primary and secondary ozone standards that specified an 8-hour ozone level of 0.075 ppm. Specifically, the standards require that the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration may not exceed 0.075 ppm.

Effective July 20, 2012, the EPA designated 45 areas throughout the country as nonattainment for the 2008 ozone NAAQS.⁹ In a separate rule, the EPA assigned classification thresholds and attainment dates based on the severity of an area’s ozone levels, determined by the area’s design value (DV).¹⁰ That separate rule also established the attainment dates for Marginal, Moderate, Serious, Severe, and Extreme nonattainment areas as 3 years, 6 years, 9 years, 15 years, and 20 years, respectively, from the effective date of the final designations.¹¹ Therefore, the attainment dates for each initial

⁷ 42 U.S.C. 7601(d); 40 CFR part 49; *see generally* 63 FR 7254 (February 12, 1998).

⁸ 73 FR 16436 (March 27, 2008).

⁹ 77 FR 30088 (May 21, 2012).

¹⁰ 77 FR 30160 (May 21, 2012). Design values are the metrics that are compared to the NAAQS levels to determine a nonattainment area’s classification at the time of initial designations and compliance with the NAAQS. *See* 40 CFR part 50, appendix P.

¹¹ 77 FR 30160 at 30171 (May 21, 2012).

nonattainment area classification for the 2008 ozone NAAQS are as follows: July 20, 2015, for Marginal areas; July 20, 2018, for Moderate areas; July 20, 2021, for Serious areas; July 20, 2027, for Severe areas; and July 20, 2032, for Extreme areas. On March 6, 2015, the EPA also promulgated a rule interpreting the CAA's ozone nonattainment area implementation requirements for the 2008 ozone NAAQS ("2008 implementation rulemaking").¹² The 2008 implementation rule articulated the CAA's substantive requirements for ozone nonattainment areas for each classification level and established deadlines for the submission of SIP revisions to address those requirements that were triggered by the areas' initial nonattainment designations.¹³

On October 26, 2015, the EPA issued a final rule that revised the NAAQS for ozone to establish a more stringent 8-hour standard ("2015 ozone NAAQS").¹⁴ In that rule, the EPA promulgated identical primary and secondary ozone standards that specified an 8-hour ozone level of 0.070 ppm. Specifically, the standards require that the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration may not exceed 0.070 ppm.

Effective August 3, 2018, the EPA designated 51 areas throughout the country as nonattainment for the 2015 ozone NAAQS.¹⁵ In a separate rule, the EPA assigned classification thresholds and attainment dates based on the severity of an area's ozone levels, determined by the area's DV.¹⁶ That separate rule also established the attainment date for Marginal, Moderate, Serious, Severe, and Extreme nonattainment areas as 3 years, 6 years, 9 years, 15 years, and 20 years, respectively, from the effective date of the final designations.¹⁷ Therefore, the attainment dates for each initial nonattainment area classification for most of the 2015 ozone NAAQS nonattainment areas are as follows:

¹² 80 FR 12264 (March 6, 2015).

¹³ *Id.*; 40 CFR 51.1100 through 1119.

¹⁴ 80 FR 65292 (October 26, 2015).

¹⁵ 83 FR 25776 (June 4, 2018).

¹⁶ 83 FR 10376 (March 9, 2018).

¹⁷ *Id.* at 10380.

August 3, 2021, for Marginal areas; August 3, 2024, for Moderate areas; August 3, 2027, for Serious areas; August 3, 2033, for Severe areas; and August 3, 2038, for Extreme areas. On December 6, 2018, the EPA also promulgated a rule interpreting the CAA's ozone nonattainment area implementation requirements for the 2015 ozone NAAQS ("2015 implementation rulemaking").¹⁸ The 2015 implementation rulemaking articulated the CAA's substantive requirements for ozone nonattainment areas for each classification level and established deadlines for the submission of SIP revisions to address those requirements that were triggered by the areas' initial nonattainment designations.¹⁹

On October 4, 2024, the EPA proposed a rulemaking that, among other things, included a policy that certain prior classification SIP requirements remain due upon an area's reclassification to a higher classification.²⁰ On January 17, 2025, the EPA finalized the January 2025 final rule.²¹ In addition to the leftover SIP elements policy, the January 2025 final rule established universal default deadlines for submitting SIP revisions and for implementation of relevant control requirements that apply for reclassified Moderate, Serious, and Severe nonattainment areas. The default deadlines apply when an area fails to attain the standard by the applicable attainment date or if the EPA grants a voluntary reclassification request. The January 2025 final rule includes different default SIP submission deadlines for different SIP elements that can be adjusted, if necessary and appropriate, through separate notice-and-comment actions. In this proposed action, the EPA is reconsidering the leftover SIP elements policy and proposing changes to the January 2025 final rule solely with respect to this issue.

C. What is the statutory authority for the proposed actions?

¹⁸ 83 FR 62998 (December 6, 2018).

¹⁹ *Id.*; 40 CFR 51.1300 through 1319.

²⁰ 89 FR 80833 (October 4, 2024).

²¹ 90 FR 5651 (January 17, 2025).

The statutory authority for the actions proposed in this rule is provided by the CAA, as amended.²² Relevant portions of the CAA include, but are not limited to, CAA sections 172, 181, and 182 (42 U.S.C. 7502, 7511, and 7511a).

CAA section 181(a)(1) requires each area designated as nonattainment for a revised ozone NAAQS to be classified at the time of designation. Each area's classification is based on the level of ozone pollution in the area, which is determined based on the area's monitored DV.²³ CAA section 172 governs nonattainment area plan provisions in general, and CAA section 182 provides the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification. CAA sections 172 and 182 also establish the timeframes by which air agencies must submit and implement SIP revisions to satisfy the applicable attainment planning elements. Such plans "shall provide for attainment of the NAAQS,"²⁴ and that the "primary standard attainment date for ozone shall be as expeditiously as practicable" but not later than a maximum attainment date.²⁵ CAA section 182(i) lists the State planning requirements and SIP submission deadlines for reclassified areas. Specifically, CAA section 182(i) provides that areas that are reclassified by operation of law for failure to attain by the attainment date "shall meet such requirements of subsections (b) through (d) of this section as may be applicable to the area as reclassified."²⁶ Subsections (b) through (d) of CAA section 182 cover the required SIP revisions for the Moderate (section 182(b)), Serious (section 182(c)), and Severe (section 182(d)) classification levels. Each subsection requires the relevant State to "make the submissions" set out in the prior subsection (i.e., for the lower classification) in addition to the submissions required in the applicable subsection (i.e., for the new, higher classification), unless

²² 42 U.S.C. 7401 *et seq.*

²³ 42 U.S.C. 7511(a)(1).

²⁴ 42 U.S.C. 7502(c)(1).

²⁵ 42 U.S.C. 7511(a)(1).

²⁶ 42 U.S.C. 7511a(i).

explicitly stated otherwise.²⁷ The SIP revisions, control measures, and timing of such submissions and controls are intended to, among other things, ensure that areas will attain the NAAQS as expeditiously as practicable, but no later than the applicable attainment date.²⁸

Unless provided otherwise by statute, an agency may revise or rescind prior actions so long as it acknowledges the change in position, provides a reasonable explanation for the new position, and considers legitimate reliance interests in the prior position.²⁹ The EPA proposes that nothing in the language of the statute prohibits or conditions the Agency's general authority to rescind prior actions, and specifically nothing limits the Agency's authority to reconsider and revise the leftover SIP elements policy from the January 2025 final rule. Within this preamble, the EPA acknowledges the change in position (the change in statutory interpretation for CAA section 182). The EPA provides a reasonable explanation for the new position (that it is the best reading of the CAA). Lastly, the EPA considered legitimate reliance interests which are minimal, if any, due to the effect of the proposed revisions being to relieve States of SIP submissions that are currently required. Since the nature of the proposed revisions are deregulatory (require less of States compared to the status quo), reliance interests do not weigh heavily. The EPA believes this to be true for States that contain ozone nonattainment areas because this action would relieve the State of SIP submittal obligations that were previously imposed on the States. If a State still wishes to provide those SIP submissions to the EPA, the State is free to do so, and the revisions proposed in this rulemaking would not impede the State's ability in any way. So, if a State were relying on making such SIP

²⁷ See, e.g., 42 U.S.C. 7511a(b) (requiring Moderate areas to make submissions relating to Marginal areas in addition to the revisions for the Moderate classification).

²⁸ 42 U.S.C. 7502(c)(1); see also 42 U.S.C. 7511a.

²⁹ See *FDA v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542 (2025); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *Clean Air Council v. Pruitt*, 862 F.3d 1, 8 (D.C. Cir. 2017) ("Agencies obviously have broad discretion to reconsider a regulation at any time.").

submissions for some reason, the State is still free to make those submissions if this rulemaking is finalized. Further, the EPA is not aware of situations in which members of the public would have made decisions in reliance on the leftover SIP elements policy from the January 2025 final rule. That policy did not have a direct impact on the public. The EPA is specifically soliciting comments on whether any reliance interest exists that the Agency did not consider here.

II. What is the EPA proposing and what is the rationale?

A. Summary of the policy codified in the January 2025 final rule and the underlying rationale

The January 2025 final rule codified a policy that, upon reclassification, certain SIP elements associated with the area's prior classification are no longer considered applicable requirements, while other SIP elements from the prior classification are still considered applicable. Specifically, the policy provided that, following reclassification, the following SIP requirements related to the prior classification level for an ozone nonattainment area no longer apply: (1) a demonstration of attainment by the prior attainment date; (2) a reasonably available control measures (RACM) analysis tied to the prior attainment date; and (3) for areas that are voluntarily reclassified before the lower classification's attainment date, contingency measures specifically related to the area's failure to attain by the prior attainment date.

Under the leftover SIP elements policy, all other SIP elements associated with the area's prior classification are still applicable after reclassification to a higher classification. For example, a State required to submit a SIP revision addressing Moderate area Reasonably Available Control Technology (RACT) under CAA section 182(b)(2) by January 1, 2023, that had yet to fulfill that submission requirement would still be required to submit that Moderate RACT SIP by the January 1, 2023, deadline, even after the area was reclassified to Serious at a date later than January 1, 2023. If the

EPA issued a finding that the State had failed to submit that Moderate RACT SIP revision by that deadline, that finding would continue to have legal effect and consequences even after the area was reclassified to Serious. To be specific, the legal consequences stemming from such a finding would be the imposition of sanctions in the area and a requirement for the EPA to promulgate a Federal Implementation Plan (FIP). In this scenario, under the EPA's previous policy, reclassification would not terminate either of the legal consequences clocks stemming from the finding.

This policy relied on two underlying rationales that the EPA now proposes can no longer be sustained. First, the EPA asserted that interpreting the statute to carry forward certain obligations from a prior classification level is “supported by and consistent with the relevant statutory provisions and is the best interpretation of relevant CAA provisions.”³⁰ In the preamble to the January 2025 final rule, the EPA asserted that tiered ozone nonattainment area requirements in CAA section 182 are cumulative and that reclassification does not mean that certain requirements tied to a lower classification are no longer applicable.³¹ Second, notwithstanding the EPA's position at the time that requirements are cumulative, the Agency specified exceptions for certain elements of the lower classification that cannot logically be fulfilled after the attainment date for the lower classification no longer applies.³² To support this conclusion, the EPA relied on the principle that requirements that would produce an absurd result need not be given legal effect, that certain SIP elements were “as a matter of logic, impossible to fulfill” after the attainment date has passed, and that “[t]o give sensible construction to the terms of the CAA,” the EPA must “avoid an absurd result.”³³

B. Summary of new proposed approach and underlying rationale

³⁰ 90 FR 5666 (January 17, 2025).

³¹ *Id.* at 5667.

³² *Id.* at 5668.

³³ *Id.* at 5666.

In this proposed action, the EPA is proposing to revise the regulations codified in the January 2025 final rule that reflect the leftover SIP elements policy. Upon further consideration, the EPA has determined that the Agency’s prior interpretation of CAA section 182 as imposing cumulative obligations that continue to apply upon reclassification of a nonattainment area to a higher classification is not the best reading of the statute and is therefore impermissible.³⁴ The text and structure of the statute make plain that areas can only be subject to one classification at a time for an ozone NAAQS, which is the area’s current classification. Because an area can only be subject to a single classification for an ozone NAAQS at any given time, the EPA proposes that an area can only be subject to the SIP submittal and implementation requirements associated with its current classification. Under this interpretation, no absurd result is produced, and there is no need to exempt certain requirements that cannot logically carry forward because the statute’s most natural reading does not carry any requirements forward except as expressly stated, thereby solving the absurdity of certain carry-forward obligations being impossible to carry out upon reclassification. Therefore, for the reasons stated in this section, the EPA is proposing that the SIP submittal obligations in CAA section 182 attached to a prior classification are not intended to accumulate upon reclassification.

In the January 2025 final rule, the EPA used the term “cumulative” in this context to mean that all SIP submittal obligations accumulate over time irrespective of the area’s current classification. The EPA’s position was that an area is still directly governed by the obligations associated with a lower classification after reclassification such that the State must still submit all SIP elements for the lower classification on the schedules that were established while the area was governed by that lower classification, even after the area is no longer subject to that classification. The EPA is now proposing that the best

³⁴ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) (requiring Agency statutory interpretations to be based on the best interpretation, or best reading, of the statute).

reading of CAA section 182 is that, upon reclassification, an area's only ozone SIP planning obligations are those associated with the area's current classification and are to be submitted and implemented on the schedule applicable to the current classification. The EPA is proposing that a reclassified area would only be subject to one set of SIP submittal obligations in CAA section 182, not two, three, or more, as the leftover SIP policy requires in certain instances.

Under the structure and language of CAA section 182, a State with a Moderate area must meet all requirements under CAA section 182(a) and (b), a State with a Serious area must meet all requirements under CAA section 182(b) and (c), a State with a Severe area must meet all requirements under CAA section 182(c) and (d), and a State with an Extreme area must meet all requirements under CAA section 182(d) and (e). Therefore, if this proposal is finalized, as an area is reclassified, the State would not be relieved of any substantive obligations upon reclassification because the substantive SIP submittal obligations of the lower classification are also required under the area's current classification. The State would be required to fulfill its obligations for the nonattainment area in accordance with the area's current legal status as opposed to its former legal status, which was extinguished upon reclassification and no longer applies.

If a State has already satisfied a required SIP element for an area's new classification level for that NAAQS at a time when the area was at a lower classification, the EPA is proposing that the requirement would be considered fulfilled and would not be triggered anew upon reclassification. For instance, under CAA section 182(a)(1), States with Marginal areas are required to submit a baseline emissions inventory. Upon reclassification, Moderate area SIPs are to meet the requirements under CAA section 182 (a) and (b). However, the EPA is proposing that a State with an area reclassified from Marginal to Moderate would not need to resubmit a baseline emissions inventory if the State already submitted that requirement when the area was classified as Marginal.

In the proposal for the January 2025 final rule, the EPA asserted that the statute does not specify what happens to the lower classification requirements that were applicable to the area upon reclassification.³⁵ On this basis, the EPA purported to fill an alleged gap with the leftover SIP elements policy. However, CAA section 182(i) is clear: “Each State containing an ozone nonattainment area reclassified under [181(b)(2)] of this title shall meet the applicable requirements of subsections (b) through (d) of this section as may be applicable to the area as reclassified.”³⁶ CAA section 181(b)(2) specifies that areas that are determined to have failed to attain by their applicable attainment date “shall be reclassified by operation of law in accordance with table 1 of subsection (a) of this section to the higher of” either the next higher classification “or” the classification representative of the area’s current DV.³⁷ CAA section 181(b)(3), for voluntary reclassification, includes a similar cross reference to Table 1 of subsection (a) and states that the EPA would reclassify to “a higher classification.”³⁸ Table 1, which is within CAA section 181(a)(1), specifies the available classification levels. That same provision makes clear that at initial designation, each ozone nonattainment area shall be classified “as *a* Marginal Area, *a* Moderate Area, *a* Serious Area, *a* Severe Area, *or an* Extreme Area.”³⁹ The term “or” clearly indicates that a nonattainment area can only be subject to one classification at a time. The cited language also states that areas be given “a” classification level, indicating that the classification level is singular at any given time. As such, “the applicable requirements” referenced in CAA section 182(i) can only be those associated with one nonattainment classification: the reclassification status that is applicable after the reclassification.

³⁵ 89 FR 80843 (October 4, 2024) (“In contrast, the CAA does not specify what then happens to the requirements that were applicable to the area as it was formerly classified.”); *see also* 90 FR 5665 (January 17, 2025) (finalizing this approach as proposed and responding to comments).

³⁶ 42 U.S.C. 7511a(i).

³⁷ 42 U.S.C. 7511(b)(2).

³⁸ 42 U.S.C. 7511(b)(3).

³⁹ 42 U.S.C. 7511(a)(1) (emphases added).

Upon reconsideration, the EPA now believes that the previously identified gap is not a gap at all, but a logical consequence of what the text and structure of CAA section 182 provide with respect to the effect of reclassification. There is no ambiguity in the statute to resolve through a policy decision regarding which elements of the prior classification continue to apply and which do not. The EPA therefore proposes to depart from the rationale stated in support of the January 2025 final rule and to modify the regulations to align with the plain language and best reading of the CAA. Congress intended, for example, for a Serious area to meet a set of requirements inclusive of the requirements of CAA section 182(a) and (b), but as part of the Serious area plan, not as part of a retroactive plan untethered to the area's new attainment date and current, more stringent classification. Nothing in the language of the statute suggests that the requirements in each subsection of CAA section 182 accumulate upon reclassification.

This interpretation has the added benefit of resolving the absurdity the EPA identified in the January 2025 final rule with respect to carry-forward requirements that would be impossible to implement at the higher classification level. The EPA stands by the Agency's prior identification of that problem, but now proposes that such impossibilities support interpreting the statute to require only those SIP elements that apply to an area's current classification. In other words, in the January 2025 final rule, the EPA identified a real problem but reached the wrong conclusion. The text of the statute does not itself differentiate between requirements for a prior classification that are practicable or impracticable. Rather than interpreting the statute to leave such problems for resolution through rulemaking, the Agency now proposes that the best reading is the one that gives effect to all provisions without the need for further clarification. The interpretation set out in this preamble does so by concluding that the applicable SIP requirements are those set out in the relevant subsection addressing the area's current classification.

To be clear, the regulatory modifications proposed in this action would not relieve a State of substantive planning obligations upon reclassification. Rather, upon reclassification, States would remain obligated to develop, submit, and implement SIP elements in accordance with the subsection of CAA section 182 that applies to the area's now-current nonattainment classification. States would remain obligated to address the substance of the requirements associated with lower classifications to the extent specified in the subsection of CAA section 182 that governs the area's current classification level and in accordance with the timing requirements applicable to the area's current classification.⁴⁰ But those requirements and associated timelines flow from the State's current planning requirements as a result of the area's current classification and do not flow from earlier obligations associated with a classification that no longer applies.

One outcome of reclassification is an acknowledgement that a State needs additional time to implement more stringent requirements and controls in order for an area to attain. As such, the CAA provides States with additional time to focus on the full suite of more stringent applicable requirements and deadlines. The plain language of CAA section 182(i) unequivocally states that the applicable requirements for reclassified areas are those applicable to the area as reclassified. Congress' intent is clear, and the EPA does not need to, and cannot, "gap fill" where gaps do not exist. Further, when this provision is read in conjunction with the introductory language in subsections (b), (c), (d), and (e) laying out the additive nature of CAA section 182's structure, the best reading of the CAA in the approach proposed here.

The EPA's proposed change provides a consistent and uniform regulatory landscape for all States, upon reclassification, to develop and implement effective plans on a single, harmonized schedule. If a State with an area that is reclassified has not met

⁴⁰ See 40 CFR 51.1402 for the EPA's approach to SIP submission deadlines and implementation deadlines. The EPA is including citation to 40 CFR 51.1402 for informational purposes only and is not proposing to reopen this regulation.

all applicable requirements associated with a prior lower classification, the State must submit those SIP elements on the timeline specific to the area's current classification. This aligns with how Congress designed the process for an initially designated Severe area, for example. Such an area is not required to submit four distinct plans (a Marginal, Moderate, Serious, and Severe plan). An initially designated Severe area is required to submit only one plan: a Severe area plan that is inclusive of all of the requirements listed under CAA section 182(a) through (d). For an area reclassified as Severe, the requirements of CAA section 182(a)-(c) certainly continue upon reclassification, but strictly in the sense that they are now subsumed into the area's Severe area plan. Requirements associated with a prior classification cannot continue to apply in the same manner in which they were originally designed once that prior classification has been extinguished by reclassification.

Under this proposed approach, which is based on the best reading of the CAA, States would no longer be required to submit requirements for a classification that has been extinguished upon reclassification, and there is no need to exempt certain lower classification SIP elements inherently tied to a date in the past to avoid absurd results. Since the EPA is now proposing that no SIP requirements from the prior classification are "leftover," there is no need for any such exemptions. As noted above, the EPA continues to believe that certain lower classification SIP elements cannot logically carry over to a higher classification, but is now proposing to reach a different conclusion based on that observation.

The reclassified area SIPs policy enables States to focus their planning efforts and resources on attaining by their current classification's attainment date. The EPA believes that the approach proposed here has the added benefit of focusing States' efforts on the requirements applicable to an area's current classification status, thereby reducing the burdens involved in implementing requirements from multiple classification levels on

multiple timelines (and, for some areas, for multiple versions of the ozone NAAQS). The EPA further believes that the approach proposed here has the added benefit of eliminating differential treatment among areas that reached the same classification level through different pathways.

C. Proposed status of requirements for each classification level

1. Marginal Area Requirements

“Marginal” is the lowest ozone nonattainment area classification and is not a classification that can be assigned as a result of a reclassification action. CAA section 182(a) specifies the applicable requirements for nonattainment areas designated as Marginal. The CAA requires a SIP submission for a Marginal area containing a baseline emissions inventory, emissions statements, and periodic emissions inventory updates to be submitted to the EPA no later than two years after the effective date of designation, and a NNSR program to be submitted to the Agency no later than three years after the effective date of designation.⁴¹ Each ozone nonattainment area must achieve the NAAQS by its respective attainment date, which corresponds to its classification.⁴² The EPA is required to issue determinations of attainment by the attainment date within six months of the attainment date. If an area is determined to have failed to attain by its respective attainment date, it is reclassified by operation of law to the next higher classification.⁴³ If the EPA finds that a Marginal nonattainment area fails to attain by the attainment date, the area is reclassified by operation of law to Moderate. A State with a Marginal nonattainment area may also request a voluntary reclassification for that area to Moderate or higher classification.

2. Moderate Area Requirements

⁴¹ 40 CFR 51.1314 and 1315.

⁴² See CAA section 181 (establishing attainment dates from previous ozone NAAQS).

⁴³ CAA section 181(b)(2)(A).

Upon reclassification from Marginal to Moderate, a nonattainment area is subject to the requirements under CAA section 182(b). Requirements from CAA section 182(a) must be included in the SIP submission for Moderate areas pursuant to CAA section 182(b). Specifically, NNSR, baseline emissions inventories, emissions statements, and periodic emissions inventory updates are all requirements pursuant to CAA section 182(b). A State with a reclassified area is required to submit a plan that meets all these requirements in accordance with the deadlines applicable to the reclassification status.

SIP submissions for a Moderate area must contain, in addition to the elements listed in CAA section 182(a), the requirements listed under CAA sections 182(b) and 172(c) and 40 CFR part 58. Specifically, the CAA requires the SIP submission for a Moderate area to contain the following SIP elements detailed in CAA section 182(b): RACT for major stationary sources (greater than 100 tons per year (tpy)) of nitrogen oxides (NO_x) and volatile organic compounds (VOCs) and categories of sources covered by control technique guidelines (CTG), a 15 percent reasonable further process (RFP) plan over six years, and a basic vehicle inspection and maintenance (I/M) program; the following SIP elements detailed in CAA section 172(c): a modeled attainment demonstration and contingency measures for failure to attain or achieve RFP; and the following SIP elements detailed in 40 CFR part 58: an enhanced monitoring plan. If any requirement of CAA section 182(a) had previously been satisfied while the area was Marginal for the ozone NAAQS in question, the EPA is proposing that the requirement is deemed satisfied and a SIP revision need not be made by the State for that element again. If the State did not make a required SIP submission under CAA section 182(a) while an area was Marginal, that SIP submission is still due to the EPA after reclassification of the area to Moderate. However, the SIP element is now part of the area's Moderate area plan and therefore is due to the EPA in accordance with the deadline applicable to reclassified Moderate areas.

If a State had yet to submit a Marginal area requirement upon reclassification to Moderate or higher classification, the EPA is proposing that it would no longer be required to submit that Marginal area requirement in the context of a Marginal area plan. If the EPA issued a finding of failure to submit a complete SIP for any Marginal SIP elements, the Agency is proposing that the finding would be moot as the Marginal elements would no longer be required SIP elements upon reclassification. After the reclassification, the area is no longer Marginal, and the EPA is proposing that there is no obligation to submit a SIP revision to meet requirements for the now extinguished classification. If the EPA disapproved a Marginal area requirement, upon reclassification to Moderate or higher classification the Agency anticipates not needing to rescind or withdraw that disapproval, but associated sanctions clocks would be stopped pursuant to 40 CFR 52.31. The EPA is proposing that the Agency would not be obligated to promulgate a FIP because the element would no longer be considered a required SIP element as triggered by a Marginal classification. A revised SIP submission addressing that element would be evaluated anew by the EPA as part of the Moderate or higher classification plan. Unless the EPA specifies otherwise in the Agency's determination of attainment by the attainment date (DAAD) action, the applicable submittal and implementation deadlines for the Moderate area plan remain the default deadlines established at 40 CFR 51.1402. The EPA is not proposing to change these default deadlines in this rulemaking.

3. Serious Area Requirements

Upon reclassification from Moderate to Serious, a nonattainment area is subject to the requirements under CAA section 182(c). Requirements from CAA section 182(a) and (b) must be included in the SIP submission for Serious areas pursuant to CAA section 182(c). Specifically, NNSR, baseline emissions inventories, emissions statements, periodic emissions inventory updates, RACT for major stationary sources (greater than

100 tpy) of NO_x and VOCs and categories of sources covered by a CTG, the 15 percent RFP plan, the modeled attainment demonstration, contingency measures for failure to attain or achieve RFP, and the 40 CFR part 58 enhanced monitoring plan are all requirements pursuant to CAA section 182(c).⁴⁴ The State with a reclassified area is required to submit a plan that meets all these requirements in accordance with the deadlines applicable to the reclassification status.

The CAA requires the SIP submission for a Serious area to contain, in addition to the elements listed in CAA section 182(a) and (b), the requirements listed under CAA section 182(c). Specifically, the CAA requires the SIP submission for a Serious area to contain the following SIP elements detailed in CAA section 182(c): an enhanced monitoring plan, a modeled attainment demonstration, an RFP demonstration that complies with the EPA's 40 CFR part 51 regulations, an enhanced vehicle I/M program, a clean fuel fleets program, NSR requirements for existing source modifications, contingency measures for failure to attain or achieve RFP, vehicle miles traveled (VMT) reporting, and RACT for major stationary sources (greater than 50 tpy) of NO_x and VOCs. If any requirement of CAA section 182(a), (b), or 40 CFR part 58 had previously been satisfied while the area was Marginal or Moderate for the ozone NAAQS in question, the EPA is proposing that that requirement is deemed satisfied and a SIP revision need not be made by the State for that element again.⁴⁵ If the State did not make a required SIP submission under CAA section 182(a) while the area was Marginal or under CAA section 182(a) and (b) while the area was Moderate, that SIP submission is still due to the EPA after reclassification to Serious. However, the SIP element is now

⁴⁴ Basic I/M is not required to be implemented in Serious and above ozone nonattainment areas. Enhanced I/M is the requirement for Serious and above classifications pursuant to 40 CFR 51.350(a)(2).

⁴⁵ If the CAA section 182(b) major stationary source RACT requirements have previously been satisfied for the ozone NAAQS in question, the CAA section 182(c) RACT requirement can be satisfied by addressing sources with a potential to emit (PTE) of 50 tpy and greater but less than 100 tpy of VOC or NO_x. *See* the change in definition of the term "major stationary source" in CAA section 182(c). Similarly, if RACT for sources covered by CTGs has previously been satisfied for the ozone NAAQS in question, areas reclassified to Serious do not need to resubmit CTG RACT.

part of the area's Serious area plan and is therefore due to the EPA in accordance with the deadline applicable to reclassified Serious areas.

If a State had yet to submit a Moderate area requirement upon reclassification to Serious or higher classification, the EPA is proposing that it would no longer be required to submit that Moderate area element in the context of a Moderate area plan. If the EPA issued a finding of failure to submit a complete SIP for any Moderate elements, the Agency is proposing that the finding would be moot as the elements would no longer be required SIP elements upon reclassification. After the reclassification, the area is no longer Moderate, and the EPA is proposing that there is no obligation to submit for the now extinguished classification. If the EPA disapproved a Moderate area requirement, upon reclassification to Serious or higher classification the Agency anticipates not needing to rescind or withdraw that disapproval, but associated sanctions clocks would be stopped pursuant to 40 CFR 52.31. The EPA is proposing that the Agency would not be obligated to promulgate a FIP because the element would no longer be considered a required SIP element as triggered by a Moderate classification. A revised SIP submission addressing that element would be evaluated anew by the EPA as part of the Serious or higher classification plan.

Unless the EPA specifies otherwise in the Agency's DAAD action, the applicable SIP submittal and implementation deadlines for the Serious area plan remain the default deadlines established at 40 CFR 51.1402. The EPA is not proposing to change or reopen the default deadlines in this rulemaking.

4. Severe Area Requirements

Upon reclassification from Serious to Severe, a nonattainment area is subject to the requirements under CAA section 182(d). Requirements from CAA section 182(a) through (c) must be included in the SIP submission for Severe areas pursuant to CAA section 182(d). Specifically, NNSR, baseline emissions inventories, emissions

statements, periodic emissions inventory updates, RACT for major stationary sources (greater than 50 tpy) of NO_x and VOCs and categories covered by a CTG, an enhanced monitoring plan, a modeled attainment demonstration, an RFP demonstration that complies with the EPA's 40 CFR part 51 regulations, an enhanced vehicle I/M program, a clean fuel fleets program, NSR requirements for existing source modifications, contingency measures for failure to attain or achieve RFP, and VMT reporting are all requirements pursuant to CAA section 182(d). The State with a reclassified area is required to submit a plan that meets all these requirements in accordance with the deadlines applicable to the reclassification status.

The CAA requires the SIP submission for a Severe area to contain, in addition to the elements listed in CAA section 182(a) through (c), the requirements listed under CAA section 182(d). Specifically, the CAA requires the SIP submission for a Severe area to contain the following SIP elements detailed in CAA section 182(d): a CAA section 185 penalty fee program for major stationary sources, a VMT growth demonstration, and RACT for major stationary sources (greater than 25 tpy) of NO_x and VOCs. If any requirement of CAA section 182(a)-(c) had previously been satisfied while the area was Marginal, Moderate, or Serious for the ozone NAAQS in question, the EPA is proposing that the requirement is deemed to have been satisfied and a SIP revision need not be made by the State for that element again.⁴⁶ If the State did not make a required SIP submission under CAA section 182(a) through (c) while the area was Marginal, Moderate, or Serious, that SIP submission (or SIP element) is still due to the EPA after reclassification to Severe. However, the SIP element is now part of the area's required

⁴⁶ If the CAA section 182(c) major stationary source RACT requirements have previously been satisfied for the ozone NAAQS in question, the CAA section 182(d) RACT requirement can be satisfied by addressing sources with a PTE of 25 tpy and greater but less than 50 tpy of VOC or NO_x. *See* the change in definition of the term "major stationary source" in CAA section 182(d). Similarly, if RACT for sources covered by CTGs has previously been satisfied for the ozone NAAQS in question, areas reclassified to Serious do not need to resubmit CTG RACT.

Severe area plan and is therefore due to the EPA in accordance with the deadline applicable to reclassified Severe areas.

If a State had yet to submit a Serious area requirement upon reclassification to Severe or higher classification, the EPA is proposing that it would no longer be required to submit that Serious area requirement in the context of the Serious area plan. If the EPA issued a finding of failure to submit a complete SIP for any Serious elements, the Agency is proposing that the finding would be moot as the Serious area elements would no longer be required SIP elements upon reclassification. After the reclassification, the area is no longer Serious, and there is no obligation to submit for the now extinguished classification. If the EPA disapproved a Serious area requirement, upon reclassification to Severe or higher classification the Agency anticipates not needing to rescind or withdraw that disapproval, but associated sanctions clocks would be stopped pursuant to 40 CFR 52.31. Further, the EPA is proposing that the Agency would not be obligated to promulgate a FIP because the element would no longer be considered a required SIP element as triggered by a Serious classification. A revised SIP submission addressing that element would be evaluated anew by the EPA as part of the Severe or higher classification plan.

Unless the EPA specifies otherwise in the Agency's DAAD action, the applicable submittal and implementation deadlines for the Severe area plan remain the default deadlines established at 40 CFR 51.1402. The EPA is not proposing to change or reopen the default deadlines in this rulemaking.

5. Extreme Area Requirements

If a State requests a voluntary reclassification of a nonattainment area to Extreme under CAA section 181(b)(3), the nonattainment area is subject to the requirements under CAA section 182(e). Requirements from CAA section 182(a) through (d) must be included in the SIP submission for Extreme areas pursuant to CAA section 182(e).

Specifically, NNSR, baseline emissions inventories, emissions statements, periodic emissions inventory updates, RACT for major stationary sources (greater than 25 tpy) of NO_x and VOCs and categories covered by a CTG, an enhanced monitoring plan, a modeled attainment demonstration, an RFP demonstration that complies with the EPA's 40 CFR part 51 regulations, an enhanced vehicle I/M program, a clean fuel fleets program, NSR requirements for existing source modifications, contingency measures for failure to attain or achieve RFP, VMT reporting, a CAA section 185 penalty fee program for major stationary sources, and a VMT growth demonstration are all requirements pursuant to CAA section 182(e). The State with a reclassified area is required to submit a plan that meets all these requirements in accordance with the deadlines applicable to the reclassification status.

The CAA requires the SIP submission for an Extreme area to contain, in addition to the elements listed in CAA section 182(a) through (d), the requirements listed under CAA section 182(e). Specifically, the CAA requires the SIP submission for an Extreme area to contain the following SIP elements detailed in CAA section 182(e): clean fuels requirements for boilers, traffic congestion controls, and RACT for major stationary sources (greater than 10 tpy) of NO_x and VOCs. If any requirement of CAA section 182(a) through (d) had previously been satisfied while the area was Marginal, Moderate, Serious, or Severe for the ozone NAAQS in question, the EPA is proposing that the requirement is deemed satisfied and a SIP revision need not be made by the State for that element again.⁴⁷ If the State did not make a required SIP submission under CAA section 182(a) through (d) while the area was Marginal, Moderate, Serious, or Severe, that SIP submission (or SIP element) is still due to the EPA after reclassification to Extreme.

⁴⁷ If the CAA section 182(d) major stationary source RACT requirements have previously been satisfied for the ozone NAAQS in question, the CAA section 182(e) RACT requirement can be satisfied by addressing sources with a PTE of 10 tpy and greater but less than 25 tpy of VOC or NO_x. *See* the change in definition of the term "major stationary source" in CAA section 182(e). Similarly, if RACT for sources covered by CTGs has previously been satisfied for the ozone NAAQS in question, areas reclassified to Serious do not need to resubmit CTG RACT.

However, the SIP element is now part of the area's Extreme area plan and is therefore due to the EPA in accordance with the deadline applicable to reclassified Extreme areas.

If a State had yet to submit a Severe area requirement upon reclassification to Extreme, the EPA is proposing that it would no longer be required to submit that Severe area requirement in the context of a Severe area plan. If the EPA issued a finding of failure to submit a complete SIP for any Severe elements, the Agency is proposing that the finding would be moot as the Severe area elements would no longer be required SIP elements upon reclassification. After the reclassification, the area is no longer Severe, and the EPA is proposing that there is no obligation to submit for the now extinguished classification. If the EPA disapproved a Severe area requirement, upon reclassification to Extreme the Agency anticipates not needing to rescind or withdraw that disapproval, but associated sanctions clocks would be stopped pursuant to 40 CFR 52.31. Further, the EPA is proposing that the Agency would not be obligated to promulgate a FIP because the element would no longer be considered a required SIP element as triggered by the Severe classification. A revised SIP submission addressing that element would be evaluated anew by the EPA as part of the Extreme classification plan.

Unless the EPA specifies otherwise in the Agency's voluntary reclassification of an area to Extreme, the applicable submittal and implementation deadlines for the Extreme area plan remain the default deadlines established at 40 CFR 51.1402. The EPA is not proposing to change or reopen the default deadlines in this rulemaking.

D. Implementation Impacts

While the EPA is soliciting public comment on the reclassified area SIPs policy proposed in this rulemaking, the Agency is also soliciting comment on implementation impacts related to this proposed rulemaking. For example, the proposed rule, if finalized, would affect States that contain 2015 ozone NAAQS nonattainment areas that were reclassified from Moderate to Serious in 2024 and 2025.

States with ozone nonattainment areas designated Moderate under the 2015 ozone standard were required to submit Moderate ozone planning SIP elements in accordance with CAA section 182(b) by January 1, 2023.⁴⁸ Effective November 17, 2023, the EPA issued a finding that 11 States had failed to submit complete Moderate area SIP requirements by the January 1, 2023, due date (“October 2023 FFS”).⁴⁹ The October 2023 FFS initiated sanctions clocks and a deadline for the EPA to promulgate a FIP for those SIP requirements. The sanctions clocks could be terminated by an EPA determination that a State submitted a complete SIP. The FIP obligation could be obviated by a final Agency action approving the requisite SIP elements.

In late 2024 into 2025, EPA Regions issued actions under CAA section 181(b)(2), including determinations of attainment by the 2015 ozone Moderate area attainment date and findings of failure to attain in region-specific actions. Eighteen 2015 ozone Moderate nonattainment areas in a total of 15 States were reclassified by operation of law from Moderate to Serious as a result of these findings.⁵⁰ In accordance with 40 CFR 51.1402, which the EPA is not proposing to revise or reopen here, States with reclassified Serious areas were required to submit Serious area SIPs by January 1, 2026.

Under the leftover SIPs policy as codified in the January 2025 final rule, States with nonattainment areas that were once classified as Moderate but have since been reclassified as Serious still remain obligated to submit their Moderate area SIP revisions if they have not done so (except for RACM and the Moderate area attainment demonstration in accordance with 40 CFR 51.1403(a)(2)). Furthermore, the EPA’s October 2023 FFS for those Moderate area SIP revisions remains in effect even after the relevant areas were reclassified to Serious.

⁴⁸ 87 FR 60897 (October 7, 2022).

⁴⁹ 88 FR 71757 (October 18, 2023).

⁵⁰ *E.g.*, 89 FR 101901 (December 17, 2024) and 89 FR 103657 (December 19, 2024).

Under the approach proposed in this rulemaking, if a State with an area that has been reclassified from Moderate to Serious has not submitted a Moderate area requirement, the EPA is proposing that the State would no longer be required to do so in the context of a Moderate area plan. If this rule is finalized as proposed, the October 2023 FFS for the Moderate area SIP submissions would be moot since the Moderate elements would no longer be required SIP elements upon reclassification to Serious. After the reclassification, the area is no longer Moderate, and the EPA is proposing that there is no obligation to submit for the now extinguished classification.⁵¹ Further, if this proposed rule is finalized, the EPA would not be obligated to promulgate a FIP as a result of the October 2023 FFS because the elements would no longer be considered required SIP elements. A revised SIP submission addressing all relevant elements would be evaluated anew by the EPA as part of the Serious or higher classification plan.

In addition to the reclassified area SIPs policy, the EPA is soliciting public comment on the implementation impacts of this rule that may be informative for the Agency. For a complete survey of 2008 and 2015 ozone nonattainment areas that may be impacted by this rule, the EPA recommends that commenters reference 40 CFR part 81 and the “Required State Implementation Plan Elements Dashboard.”⁵²

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

⁵¹ Note that the sanctions clocks associated with the October 2023 FFS have already been terminated by completeness determinations for all 11 States implicated by that finding. See <https://www.epa.gov/air-quality-implementation-plans/status-active-sanctions-clocks-under-clean-air-act>.

⁵² <https://awsedap.epa.gov/public/extensions/specs-element-dashboard/index.html>.

This proposed action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to Executive Order 12866 review have been documented in the docket.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This proposed action is expected to be an Executive Order 14192 deregulatory action. This proposed rule is expected to provide burden reduction by codifying a policy that, following reclassification, a State is only required to submit SIP revisions addressing requirements associated with its current classification.

C. Paperwork Reduction Act (PRA)

This proposed rule does not impose any new information collection burden under the PRA not already approved by OMB. This proposed action codifies the EPA's interpretation that, following reclassification, a State is no longer required to submit SIP revisions addressing certain requirements related to the prior classification level for an ozone nonattainment area. OMB has previously approved the EPA's information collection activities contained in the existing regulations and has assigned OMB control number 2060-0695.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities but rather will relieve States of duplicative NAAQS planning requirements.

E. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action implements mandate(s) specifically and explicitly set forth in CAA section 182 without the exercise of any policy discretion by the EPA.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. This action will not impose substantial direct costs upon the Tribes or preempt tribal law. The CAA requires SIP revisions for all nonattainment areas that are reclassified from a lower classification to a higher classification. For nonattainment areas that include portions of Indian reservation lands, the plan requirements that apply to States upon reclassification do not directly apply to Tribes. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the Agency has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, the EPA’s policy on Children’s Health also does not apply.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action codifies the EPA’s interpretation that, following reclassification, a State is no longer required to submit SIP revisions addressing certain requirements related to the prior classification level for an ozone nonattainment area.

J. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Lee Zeldin,

Administrator.